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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,441

11/03/2003

Darrell R. Morrow

LDA-206A

5620

7590

05/11/2004

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EXAMINER

FITZGERALD, JOHN P

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n N . 10/700,441	Applicant(s) MORROW, DARRELL R.	
	Examin r John P Fitzgerald	Art Unit 2856	<i>AW</i>

-- The MAILING DATE f this c mmunication appears on th c ver she t with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 03 November 2003 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/771336 is acceptable and a CPA has been established. An action on the CPA follows.

Specification

2. The disclosure is objected to because of the following informalities: applicant's amendment correctly added reference to the parent Application No. 09/771336, however, the addition of "now US patent 6,640,615 needs to be added.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 21, 23 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by US 2002/0194899 A1 to Gebele et al., hereinafter Gebele et al. Gebele et al. disclose a method for determining a packaging material specimen's permeation of a gas of interest having all of the claimed method steps including obtaining data representing the specimen's permeation of a test

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gas (O₂ :oxygen, He :helium, CO₂ :carbon dioxide or mixtures of gasses (as recited in claims 23 and 24)) (Gebele et al. page 1, paragraph [0012]) and the gas of interest (CO₂) permeation rates through the material (PET : polyethylene terephthalate and coatings) making up the specimen; and the employing gas-law relations to determine the specimen's gas-of-interest permeation based on the test gas permeation data and correlated data.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0194899 A1 to Gebele et al. Gebele et al. disclose a method for determining a packaging material specimen's permeation having all of the steps stated previously, including the method steps of calculating the permeation of the specimen by the gas-of-interest via gas laws $(pV/T) = \text{constant}$, and relations utilizing proportionality constants K calculated from the test gas data. However, Gebele et al. does not expressly disclose the employment of the relation $P_X = P_T(p_X/p_T)$ to determine the specimen's gas-of-interest permeation P_X , where p_T is the packaging material test gas permeability, p_X is the packaging material gas-of-interest permeability, and P_T is the specimen's test gas permeation, a basic proportionality relationship, wherein the term (p_X/p_T) is the proportional constant, which of course, is dependent upon the test gas employed. It would have been obvious to one having ordinary skill in the art at the time

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the invention was made to employ any type of proportionality relationship to determine the permeability of the gas-of-interest, based on the test gas data, thus providing a quantitative assessment of the permeability of the packaging specimen's permeability. Furthermore, simple proportional relationships, such as the one stated in claim 22 are employed in the testing and measurement art, and is considered well within the purview of one of ordinary skill to formulate them.

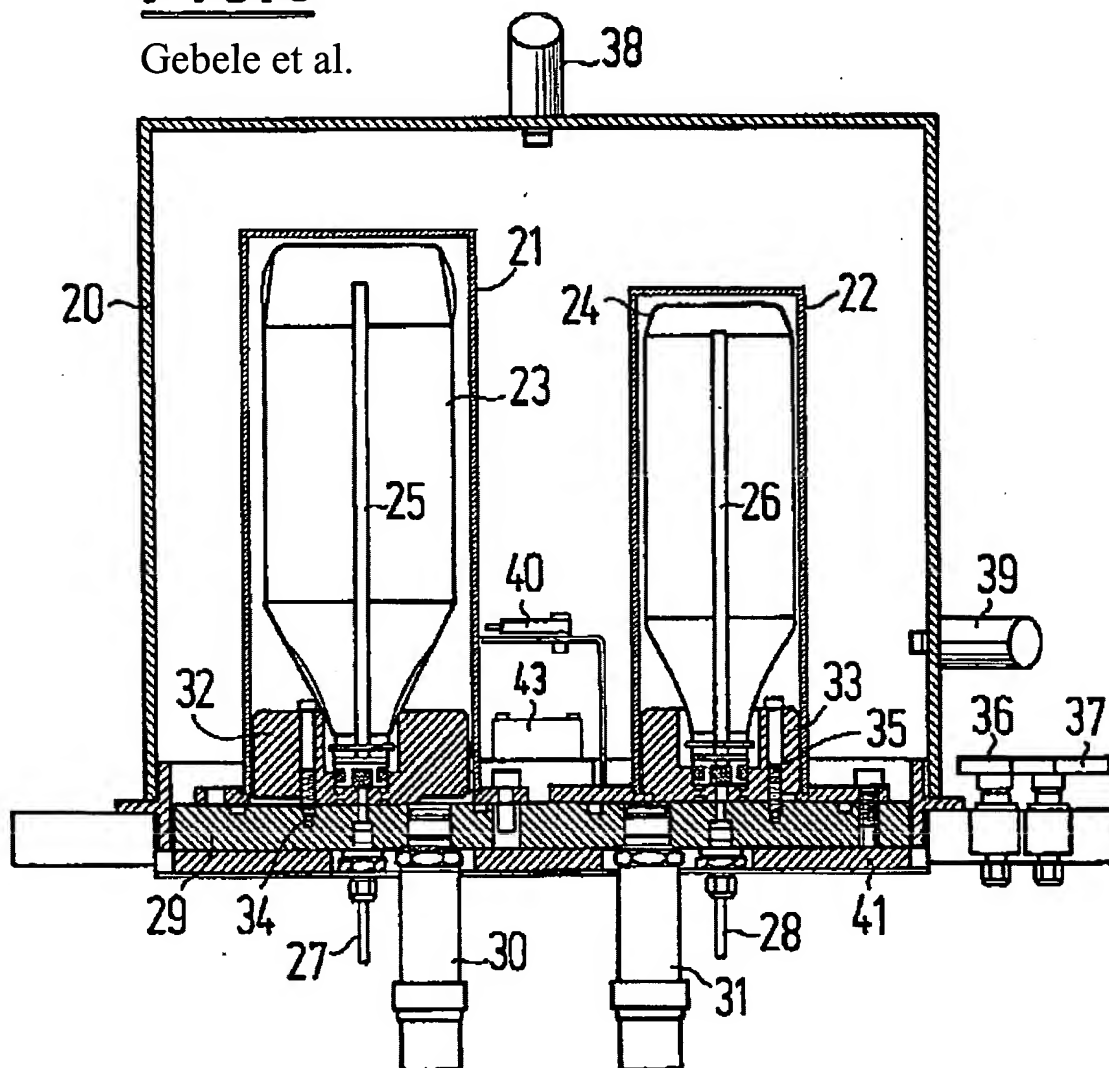
7. Claims 25-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0194899 A1 to Gebele et al. Gebele et al. disclose an apparatus (Figs. 1-7) for determining a packaging material specimen's transmission of a gas of interest having all of the claimed method steps including obtaining data representing the specimen's permeation of a test gas (O₂ :oxygen, He :helium, CO₂ :carbon dioxide or mixtures of gasses (as recited in claims 26 and 27)) (Gebele et al. page 1, paragraph [0012]) and the gas of interest (CO₂) permeation rates through the material (PET : polyethylene terephthalate and coatings) making up the specimen; and the employing gas-law relations to determine the specimen's gas-of-interest permeation based on the test gas permeation data and correlated data. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the apparatus disclosed by Gebele et al. to calculate the gas-of-interest permeability of a packaging specimen utilizing test gases, thus to accurately gauge and ascertain the permeability of the packaging before and after coatings are applied (Gebele et al.: page 1, paragraphs [0001] to [0003]. Furthermore, although Gebele et al. do not expressly disclose a processor operating on stored data obtained by utilization of the apparatus disclosed, it is considered well within the purview of one of ordinary skill in the art to

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employ computational equipment (computers, calculators, etc.) having data storage capability and perform calculations of permeability based on the stored data.

FIG. 3

Gebele et al.

*Allowable Subject Matter*


8. Claim 20 is allowable over the prior art of record.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pasternak et al., Reid, Furuse, Armstrong et al., Fedder, Balke et al., Brace, Mayer et al., Martin et al., Izutsu et al., Plester et al. and Mayer all. all teach the measurement of the permeability of a gas through a specimen, employment of test gases, and shelf life.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF
04/19/2004


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